ESTOPPEL—INTERESTS AFTER ACQUIRED—QUIT CLAIM DEEDS.—By a deed containing a covenant warranting and defending the promises against the lawful claims and demands of all persons, plaintiff conveyed "all of my entire interest" of certain land to X, under whom the defendant claims. At the time this conveyance was executed the plaintiff had no interest in the land, but subsequently acquired an undivided interest under his mother's will. He thereupon brought suit to be let into possession of his estate as tenant in common with the defendant. *Held,* plaintiff was estopped by his covenant of warranty from claiming any interest in the land as devisee of his mother. *Baker* v. *Austin,* (N. C., 1917), 93 S. E. 949.

As a general rule, if a grantor having no title, a defective title, or an estate less than that which he assumes to grant, conveys with warranty, and subsequently acquires the title or estate which he purported to convey, or perfects his title, such after-acquired or perfected title will inure to the grantee by way of estoppel. RAWLE, COVS. FOR TITLE (5th ed.), Ch. 11. The application of this rule to conveyances of the grantor's "right, title, and interest," protected by covenants of warranty, has presented a perplexing problem to the courts. In some cases, the phrase "said premises" or similar expressions ordinarily used in covenants of warranty, have been construed to mean the lands previously described. BIGELOW, ESTOPPEL, (6th ed.) 438; *Jones* v. *King,* 25 Ill. 334; *Loomis* v. *Bedel,* 11 N. H. 74; *Bayley* v. *McCoy,* 8 Ore. 259; *Blackwell* v. *Harrelson,* 99 S. C. 264; *Mills* v. *Catlin,* 22 Vt. 98. In such instances, as in the present case, any interest which the grantor may subsequently acquire will inure to the benefit of the grantee. On the other hand, many courts have held that such expressions as "said premises" in covenants of warranty are limited to the restricted estate conveyed, that is, to the interest which the grantor had at the time; and that no subsequently acquired title could inure to the benefit of the grantee. *Kimball* v. *Semple,* 25 Cal. 441; *Young* v. *Clippinger,* 14 Kan. 148; *Hill* v. *Coburn,* 105 Me. 437; *Sweet* v. *Brown,* 12 Metc. 175; *Hull's Adm'r.* v. *Hull's Heirs,* 35 W. Va. 155; *Hanrick* v. *Patrick,* 119 U. S. 156. Such was also the holding in the recently decided case of *Southern Pac. Co.* v. *Dore et al.,* (Dist. Ct. of App., 1st Dist. Cal., 1917), 168 Pac. 147. See DEVLIN, DEEDS, Ed. 3, § 27; BREWSTER, CONVEYANCING, § 207; BIGELOW, ESTOPPEL, (6th ed.) 435. Under the construction adopted in these last mentioned cases, if a grantor has no title at the time he executes the conveyance, the covenant of warranty is valueless at a time when it is most needed. Such a result should cast some doubt on the wisdom of adopting that construction.

EXTRADITION—"FUGITIVE FROM JUSTICE."—In proceedings under a petition for a writ of *habeas corpus,* it appeared that the petitioner had been arrested in the State of Texas for an offense there committed, had, with permission of the Texas authorities, been taken on process under extradition to the State of California, there to answer to a charge of having committed a crime, had been freed of the latter charge, and had again been taken into custody, under a warrant of rendition issued by the Governor of California upon a requisition made by the Governor of Texas. *Held,* that

petitioner was not a fugitive from justice, so as to be subject to extradition, under Sec. 2, Art. 4, U. S. Constitution. *In re Whittington* (Dist. Ct. of App., 2nd Dist., Cal., 1917), 167 Pac. 404.

The principal case is undoubtedly right in the conclusion it reaches and the broad general proposition it lays down, that one cannot be said to be a fugitive from justice who does not voluntarily leave the state, but is taken out against his will and under compulsory process, the state having voluntarily relinquished the jurisdiction of its courts over his person. But, when one, who does voluntarily leave the state, is a fugitive from justice therefrom, may present a more difficult question. The recent case of *Biddinger* v. *The Commissioner of Police of the City of New York,* 38 Sup. Ct. 41, is interesting as an indication of how far the courts will go in declaring one to be a fugitive from justice, under the constitutional provision and the laws in accordance therewith. Biddinger was indicted in Illinois, in 1916, charged with crimes committed there between Oct. 15, 1908, and Sept. 2, 1910. Illinois statutes provide that all indictments for crimes such as those charged against Biddinger must be found within three years next after the commission of the crime, no period during which the party charged was not usually and publicly resident within the state to be included in the time of limitation (Ill. Crim. Code, Div. IV, Secs. 3 and 5). Biddinger was taken into custody, under a warrant of rendition issued by the Governor of New York upon requisition made by the Governor of Illinois, and sued out a writ of *habeas corpus.* Upon the hearing, the writ was discharged. Biddinger appealed, upon the ground that the lower court erred in excluding evidence offered by him to prove that he had been usually and publicly resident within the State of Illinois continuously for more than three years after the dates on which he was charged with having committed the crimes, the claimed purpose of the tender of the evidence being to prove that Biddinger was not a fugitive from justice, and therefore not subject to extradition. The court held that there had been no error; that Biddinger was a fugitive from justice; that extradition provisions must be liberally construed, to effect their purpose of eliminating the boundaries of states, "so that each may reach out and bring to speedy trial offenders against its laws from any part of the land", and thus prevent the general requirement of the state constitutions, that persons accused of crime shall be tried in the county or district in which the crime was committed, "from becoming a shield for the guilty rather than the defense for the innocent, which it was intended to be". A person, charged by indictment or affidavit before a magistrate within a state with the commission of a crime covered by its laws, who leaves the state, no matter for what purpose nor under what belief; or who, having committed a crime in one state, returns to his home in another, has been held to become a fugitive from justice, from the time of such leaving, within the meaning of the constitution and laws of the United States. *Roberts* v. *Reilly,* 116 U. S. 80; *Appleyard* v. *Massachusetts,* 203 U. S. 222; *Kingsbury's Case,* 106 Mass. 223; *In re Hess and Orr,* 5 Kan. App. 763; *State* v. *Richter,* 37 Minn. 436. In view of these authorities, the court seems to have acted properly in the Biddinger case. Biddinger was in Illinois at the time the

crimes were committed there; he was charged by indictment with their commission; he voluntarily left the state subsequent to their commission and was found without the state. Thus, all the elements essential to constitute one a fugitive from justice were present. Whether Biddinger can be tried under the indictment is a question of a different nature, to be raised in a different manner. The court was concerned with the one question whether he was a fugitive from justice so as to be subject to extradition.

FRAUDS, STATUTE OF—CHECK AS PART PAYMENT.—Defendant received a check from plaintiff for $5,000 in payment for live stock. *Held,* a check is not such part payment as will take a contract out of the Statute of Frauds. *Bates* v. *Dwinell* (Neb., 1917), 164 N. W. 722.

The plaintiff in this case had only $1,500 in the bank at the time he issued the check but the cashier of the bank testified that the check would have been paid if presented. There is a direct conflict of authority upon the question here presented. In *McLure* v. *Sherman,* 70 Fed. 190, it was held that a check drawn upon a deposit in the bank named as drawee has a money value and is a sufficient part payment to satisfy the statute. In this case, it is said, "A check given to a person in the ordinary course of business is of such value that the person who receives it cannot look to the drawer of the check for the amount named therein until he has presented the check to the drawee or payee for payment, and payment refused". To the same effect is *Logan* v. *Carroll,* 72 Mo. App. 613, in which it is held that if the check is accepted as payment the statute is satisfied. The contrary view is reached in *Groomer* v. *McMillan,* 143 Mo. App. 612, in which it is said, "The law is that the payment, to be effective in avoidance of the Statute of Frauds, must be an absolute payment * * * 'Nothing is better settled than that a check is not payment, but is only so when the cash is received on it'." It is said in a number of cases that the part payment may be in anything of value. *Kuhns* v. *Gates,* 92 Ind. 66; *Howe & Co.* v. *Jones,* 57 Iowa 130; *Dow* v. *Worthen,* 37 Vt. 108. It might be interesting to note in this connection that the giving of a buyer's promissory note is not a sufficient part payment because it is said that a note merely postpones the time of payment. *Krohn* v. *Bantz,* 68 Ind. 277; *Combs* v. *Bateman,* 10 Barb (N. Y.) 573. In *Burton* v. *Gage,* 85 Minn. 355, it was held that the transfer of a logging contract as payment of the purchase money is within the Statute. The holding of this case, however, seems to be consistent with the view that a check is not a payment of an antecedent debt in the absence of an express agreement to consider it as such. *People's Savings Bank* v. *Gifford,* 108 Ia. 277.

HABEAS CORPUS—RELEASE OF CONVICT—CONVICTION BY FALSE TESTIMONY.—The plaintiff, a prisoner in the state penitentiary for three years, submitted an affidavit of the prosecutrix that her testimony leading to his conviction was procured by intimidation. *Held,* that *habeas corpus* would not lie to secure his release. *Springstein* v. *Saunders* (Iowa, 1917), 164 N. W. 622.

To warrant the discharge of a prisoner the sentence under which he is held, must be not only erroneous and voidable, but absolutely void. *Ex parte Reed,* 100 U. S. 13. An illegality which renders such judgment void